

### REMARKS

This is in response to the Office Action dated October 4, 2004, and the references cited therewith.

Claims 40, 45, and 47-50 are amended. Claims 40-60 are pending in this application.

### Specification

The specification was objected to for various informalities. Applicant has amended the specification as suggested by the Examiner.

### §102 Rejection of the Claims

Claims 40-42, 45-46 and 48-49 were rejected under 35 USC § 102(b) as being anticipated by Pless et al. (U.S. Patent No. 5,131,388).

#### Claims 40-42

Applicant has amended claim 40 to better describe the subject matter recited in the claim. Applicant believes claim 40 is not anticipated by the cited reference since the reference does not include each limitation recited in the claim. For instance, Applicant cannot find in Pless, et al. an assembly including at least one capacitor having first, second, and third capacitor modules having respective first, second, and third edge faces, with the third edge face set back from the second edge face and the second edge face set back from the first edge face to define a curved profile, as recited in claim 40.

Claims 41 and 42 include each limitation of their parent claim and are therefore also not anticipated by the cited reference. Reconsideration and allowance is respectfully requested.

#### Claims 45-46 and 48-49

Applicant has amended claim 45 to better describe the subject matter recited in the claim. Applicant believes claim 45 is not anticipated by the cited reference since the reference does not include each limitation recited in the claim. For instance, Applicant cannot find in Pless, et al. an assembly having a first capacitor including a curved outer surface and a second capacitor including a curved outer surface, the first and second capacitors stackable within an implantable medical device such that the curved outer surface of the first capacitor and the curved outer

surface of the second capacitor define a curved profile congruent with a curved inner surface of the implantable medical device, as recited in claim 45.

Claims 46, 48, and 49 include each limitation of their parent claim and are therefore also not anticipated by the cited reference. Reconsideration and allowance is respectfully requested.

### §103 Rejection of the Claims

Claims 43-44 and 50 were rejected under 35 USC § 103(a) as being unpatentable over Pless et al. (U.S. Patent No. 5,131,388) in view of Elias et al. (U.S. Patent No. 5,926,357).

Claims 43-44 and 50 include each limitation of their respective parent claims and are not obvious in view of the cited references since even if combined, the combination does not include each limitation of the parent claims. Reconsideration and allowance is respectfully requested.

### Double Patenting Rejection

Claims 40-42 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 23 of U.S. Patent No. 6,522,525.

Claims 43-49 and 51-60 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7 and 22 of U.S. Patent No. 6,522,525 in view of Pless et al. (U.S. Patent No. 5,131,388).

Claims 40-50 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,6 and 11 of U.S. Patent No. 6,674,634 in view of Pless et al. (U.S. Patent No. 5,131,388).

Applicant submits herewith a Terminal Disclaimer in compliance with 37 CFR 1.321(c) to obviate the obviousness-type double patenting rejections of claims 1-40. Reconsideration and allowance is respectfully requested. Moreover, notwithstanding the Terminal Disclaimer, Applicant does not necessarily acquiesce to the Examiner's assertions in the Double Patenting section of the Office Action and Applicant reserves the right to traverse the assertions in any continuation applications.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 359-3267 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

MICHAEL J. O'PHELAN ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
(612) 359-3267

Date 1/03/05

By Peter C. Maki  
Peter C. Maki  
Reg. No. 42,832

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 4 day of January, 2005.

Paula Suchy

Name

Paula Suchy

Signature